

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

Thursday, October 20, 2011

Department of Health Professions

Richmond, VA

CALL TO ORDER: Dr. Dalton called the meeting of the Full Board to order at 8:46 a.m.

ROLL CALL

MEMBERS PRESENT: Claudette Dalton, M.D., President
Valerie Hoffman, D.C., Vice-President
Deeni Bassam, M.D.
Sandra Bell, M.D.
Randy Clements, D.P.M.
William Epstein, M.D. (late arrival)
Irina Farquhar, Ph.D.
Stephen Heretick, J.D.
Robert Hickman, M.D.
Jane Maddux
Jane Piness, M.D.
Karen Ransone, M.D.
Wayne Reynolds, D.O.
Michael Signer, Ph.D., J.D.

MEMBERS ABSENT: Kamlesh Dave, M.D.
Gopinath Jadhav, M.D.
Stuart Mackler, M.D., Secretary/Treasurer

STAFF PRESENT: William L. Harp, M.D., Executive Director
Jennifer Deschenes, J.D., Deputy Executive Director, Discipline
Barbara Matusiak, M.D., Medical Review Coordinator
Ola Powers, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Elaine Yeatts, DHP Senior Policy Analyst
Amy Marschean, Senior Assistant Attorney General
Allison Tysinger, Senior Assistant Attorney General
Arne Owens, DHP, Chief Deputy Director

OTHERS PRESENT: W. Scott Johnson, Esq., HDJN, MSV
Mike Jurgensen, MSV
Hunter Jamerson, VAFP

EMERGENCY EGRESS PROCEDURES

Dr. Hoffman read the emergency egress procedures for Conference Room 2.

APPROVAL OF THE JUNE 23, 2011 MINUTES

Dr. Harp requested the following amendment to the minutes:

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Prescription Monitoring Program Statistics

Dr. Harp noted an increased number of registered prescribers and increased usage; requests are up by 50%.

Dr. Reynolds moved to accept the amended minutes of June 23, 2011. The motion was seconded by Dr. Piness and carried unanimously.

ADOPTION OF AGENDA

Dr. Reynolds moved to adopt the agenda as presented. The motion was seconded by Dr. Ransone and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

In Dr. Reynolds-Cane's absence, Arne Owens, DHP Deputy Director, provided the Board with an overview of several noteworthy DHP issues.

Budget

Mr. Owens informed the Board that due to efficiency measures put into place last fiscal year, the agency has been able to maintain a fairly stable financial position; areas with identified deficits are being addressed. Mr. Owens noted that with the upcoming move of our servers to Chesapeake, the agency will incur increased expense for its information

technology.

Case processing

Mr. Owens discussed a few of the recently launched efforts designed to improve the processing of cases. The “Tier I” approach focuses on improving coordination between the boards and Enforcement by holding weekly meetings with board staff and case intake analysts to discuss incoming cases and focus efforts. Mr. Owens advised that there are 21+ recommendations that will be implemented over the next year.

Dr. Harp said that since 2005, Board of Medicine staff has been available to agency investigators to discuss incoming cases. He pointed out that Dr. Matusiak currently meets with Enforcement on a weekly basis for case discussion and focus. Dr. Harp advised that Dr. Matusiak will be participating in the newly developed Tier I group to share her knowledge and the efficiency measures she brings to case review.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT’S REPORT

There was no report.

VICE-PRESIDENT’S REPORT

There was no report.

SECRETARY-TREASURER’S REPORT

There was no report.

EXECUTIVE DIRECTOR’S REPORT

Board Appointments

Dr. Harp introduced the Board’s newest members: Robert Hickman, M.D., gastroenterologist from Lynchburg who succeeds Dr. William Mann in the 6th District; Irene Farquhar, Ph.D., citizen member from Burke, who succeeds Roderick Mathews, J.D.; and in absentia Kamlesh Dave, M.D., cardiologist from Chester, who succeeds Juan Montero, M.D. in the 4th District.

Dr. Harp also acknowledged the presence and continued service of Dr. Sandra Bell (3rd District) and Mr. Stephen Heretick (Portsmouth), whose second terms expired June 30, 2011. All thanked them for their continued dedication to the Board and its work.

Dr. Harp announced the resignation of Jennifer Lee, M.D. (8th District). Dr. Lee has

accepted a one-year fellowship with the White House.

Dr. Harp also mentioned the newest appointees of the advisory boards: Mitch Lovinger, OT and Kathleen Smith, OT of the Advisory Board on Occupational Therapy; Christian Chisholm, MD and Deb McPherson of the Advisory Board on Midwifery.

Dr. Dalton thanked everyone and remarked that their hard work is appreciated.

Revenue and Expenditures

Dr. Harp briefly reviewed the Revenue and Expenditures report. The Board's cash on hand at the end of FY2011 was \$5.26 million. He noted that the Board's largest expenditures in FY2011 were Enforcement/investigations and the Office of the Attorney General.

HPMP Report

This report was for informational purposes only. No action was required.

PMP Report

Dr. Harp mentioned that the number of inquiries to the PMP for 2011 have already exceeded the total number of requests for all of 2010. There are over 11,000 prescribers and pharmacists registered to use the program. There are 66 million prescriptions in the database with 1 million being added monthly. Dr. Harp pointed out that 79.1% of the practitioners that write the largest number of prescriptions for controlled substances are registered PMP users. Those who write fewer prescriptions for controlled substances are less likely to be signed up as users. It is a good thing that the most prolific writers are the most participatory. Dr. Harp mentioned that recently a reporter from New York had informed the Board that Virginia was the leading state in terms of actions for improper prescribing; he based his conclusion on a review of reports to the National Practitioner Data Bank.

This report was for informational purposes only. No action was required.

VCU Simulation Lab

Dr. Harp informed the Board that he had the opportunity to tour the simulation lab at MCV, and it appears to be one of the best in the nation. VCU has expressed interest in speaking with the Board about possible ways it could be of help with practitioners that need assessment and remediation.

Participation List

Dr. Harp briefly reviewed the Participation Report provided by FSMB listing the activities

that current and former board members were involved in with the Federation from April 2010-April 2011.

Mr. Heretick added that the FSMB Foundation is working on several projects. He mentioned the Risk Evaluation and Mitigation Strategies with the FDA and Dr. Scott Fishman's 2nd edition of "Responsible Opioid Prescribing". The 2nd edition will have accompanying CME CAT I credit, the instruments for which will most likely be housed on FSMB's website. Dr. Harp mentioned that he has been asked to review the draft of the 2nd edition.

Mr. Heretick also noted that the State of Washington legislature is requiring the development of performance-based standards for the Washington State Medical Quality Assurance Commission that can be used as measures of the Commission's effectiveness. This requirement is, in part, in response to Public Citizen's rankings of boards by Sidney Wolfe, M.D. Mr. Heretick believes that Washington will endeavor to develop standards that can be applied to all boards of medicine.

Mr. Heretick stated that the Special Purpose Examination (SPEX) has been enhanced, and as a way to collect feedback from the boards about the exam, FSMB is offering one free exam per state board.

FSMB Maintenance of Licensure (MOL)

Dr. Dalton advised that MOL has been in process for almost two years. There are three major aspects to MOL - Minimal Data, Re-Entry and the Non-Clinical committee, which she is chairing. She said that most likely boards will be asked to collect a certain amount of data, including workforce information, in support of this project.

Dr. Harp commented that Dr. Dalton has been leading the charge on the competency issue here at the Board. The Ad Hoc Committee on Competency's recommendation to participate in an FSMB pilot project was supported by the Full Board in June 2011. Dr. Harp stated that FSMB will soon provide information on the projects available, at which time a decision will be made on the aspects of the pilot with which Virginia will participate.

Surgical Assistants and Surgical Technologists

Dr. Harp advised that regulation of surgical assistants and surgical technologists by the Board of Medicine has been recommended by the Board of Health Professions. He anticipates that this recommendation will be presented to the 2012 General Assembly session. Dr. Harp also mentioned that there is a possibility that the Board will be getting the profession of genetic counselors in the future.

Richmond Academy of Medicine (RAM)

Dr. Harp mentioned the article in the RAM newsletter and hopes he represented the

Board members and their dedication to the Board's mission well.

DHP Orientation

Dr. Harp praised the agency's day of orientation held on October 14, 2011 for new and veteran board members. Dr. Farquhar stated that the meeting was very informative, well- organized, and she very much appreciated the opportunity to attend. Dr. Hickman shared the same sentiment; however, he opined that the Conflict of Interest Act training might best be addressed at a separate time.

MSV Meeting

Dr. Harp spoke of the upcoming Annual Meeting of the Medical Society of Virginia and mentioned that Ralph Orr, PMP Director, will be a speaker during the CME session. Dr. Harp said that we could all be proud of the leadership and administrative excellence Mr. Orr brings to the program. He has created a tool for physicians to more easily identify patients that may need help with substance abuse and also to stem the tide of diversion.

COMMITTEE AND ADVISORY BOARD MINUTES

Ms. Marschean requested the following amendment to the Legislative Committee meeting minutes:

Ms. Marschean stated that in expanding the Board's Regulations to include child abuse reporting, a practitioner would not be able to claim a lack of knowledge of suspected abuse. Ms. Marschean advised that from the standpoint of appeals, carefully crafted language in regulation §54.1-2915 would be a more efficient way to reinforce the reporting requirement and provide the Board the ~~statutory~~ ability to take disciplinary action.

Dr. Ransone moved to accept en bloc all sets of minutes with the amendment above. Mr. Heretick seconded the motion, which carried unanimously.

OTHER REPORTS

Board of Health Professions (BHP)

Dr. Harp reported that the Board of Medicine presently has no representative on the Board of Health Professions. Dr. Montero can no longer serve since his Board of Medicine successor has been appointed. The BHP position is a gubernatorial appointment.

Podiatry Report

No report.

Chiropractic Report

No report.

NEW BUSINESS

Regulatory Actions

Chart of Regulatory Actions

Ms. Yeatts briefly went over the status of the Board's regulations. She informed the Board that the regulations governing the licensure of radiologist assistants were approved by the Governor on September 7, 2011 and will be published on December 7, 2011. On that day, the Board can begin issuing licenses to qualified applicants.

This report was provided for information only. No action was required.

Regulatory Recommendation – Licensed Midwives

Ms. Yeatts highlighted the history of this issue and summarized the purpose of the regulations as requiring a licensed midwife to provide written disclosure to their high-risk clients. She said that the Legislative Committee and the Advisory Board on Midwifery voted unanimously to recommend the proposed regulations in their current form to the Board for adoption as final regulations. She said all public comment received was in favor of the regulations.

Dr. Bell moved to adopt the proposed regulations as final regulations. The motion was seconded by Dr. Piness and passed unanimously.

Ms. Yeatts advised the Board that a comprehensive list of risk factors has not been identified as yet. She said it will be the role of the Board, the Advisory Board and possibly a special workgroup to develop the list of factors with evidence-based information to support their inclusion.

Recommendation on Standards of Professional Conduct

Ms. Yeatts noted that the Office of the Attorney General has requested the adoption of amendments to regulations of health regulatory boards to clearly state that it is unprofessional conduct to fail to report child abuse or elder abuse.

Ms. Yeatts informed the Board that this issue was before the Legislative Committee in September and after discussion, the Committee agreed to recommend an addition to our existing Standards of Practice regulations.

Dr. Hoffman, Chair of the Legislative Committee, noted that although there was

agreement to send this matter to the Board for consideration, there was some concern about the impact of such an amendment and any unintended consequences. It was also noted that there was concern expressed about a practitioner being unnecessarily investigated and the fallout from such an investigation, especially when the licensee may not have had any knowledge of the alleged abuse.

Ms. Deschenes informed the Board that this has been an infrequent issue for the Board in the past. Complaints to the Board relative to child abuse have mostly been from disgruntled spouses that may see the Board as a tool in divorce or custody matters.

After discussing the intent of the amendment, Dr. Bell stated that the Board's current regulations on unprofessional conduct are sufficient and moved that no action be taken on this recommendation. The motion was seconded by Dr. Piness

The floor was opened for discussion. Dr. Bassam stated that there was some value in specifically citing child abuse and elder abuse in our regulations. He believes the addition of the proposed language would reinforce Section 54.1-2915 of the Code and not subject the physician that was unaware of abuse to discipline. He strongly supports the amendment of this law.

Dr. Hoffman called the question. The vote to take no action was 11 with 3 opposed - Dr. Bassam, Ms. Maddux, and Dr. Clements.

Dr. Harp restated what he believed the intent of the Board to be in light of this vote, that the Board would still vigorously pursue, as it has in the past, any allegation relative to child abuse or elder abuse, including the failure to report, lodged against one of its licensees. After further discussion, Dr. Dalton ruled that this issue closed.

The Board took a 10-minute break and reconvened at 10:32 a.m.

Senior Assistant Attorney General's Report

Ms. Marschean gave an update on lawsuits involving the Board. She then took the opportunity to introduce Stephen Hall, Senior Assistant Attorney General, who had been very instrumental in the dismissal of some of the Board's high profile cases in the past. Ms. Marschean announced that Mr. Hall will be leaving the employ of the Office of the Attorney General November 7, 2011.

Mr. Hall thanked all for the opportunity to represent the Board in numerous cases. He reassured the members that in suits filed against them in their official capacity as a Board member, they have immunity. He hopes that the OAG will continue to pursue with fervor any such personal suits filed against Board members.

Mr. Heretick rose to speak and said that the Board has been most fortunate to have Mr. Hall as the Board's representative in numerous matters. Mr. Hall has worked tirelessly in

protecting the Board and its members on every front. Mr. Heretick moved that the Board of Medicine show its appreciation with a resolution thanking Mr. Hall for the impeccable and diligent work that he has done on behalf of the Board. Dr. Bell seconded and the motion carried unanimously.

Applied Behavioral Analysts

Dr. Harp told the Board that law had been passed in the 2011 Session of the General Assembly that assigned applied behavior analysts to the Board of Medicine. Dr. Harp recognized Hunter Jamerson who lobbies for the Virginia Occupational Therapy Association. He mentioned that he believed some occupational therapists in Virginia are trained as applied behavior analysts. Dr. Harp said counsel may have advice to provide to the Board in this matter.

Dr. Hoffman moved to convene a closed meeting pursuant to §2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel. Additionally, she moved that Dr. Harp, Jennifer Deschenes, Amy Marschean, Allison Tysinger, Elaine Yeatts, and Arne Owens attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its discussion.

Upon returning to open session, the Board certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code of Virginia.

Dr. Bell moved that that Dr. Reynolds-Cane work with the Executive Branch to seek legislation to authorize the licensing of applied behavior analysts. The motion was seconded by Dr. Piness and carried unanimously.

Dr. Bell then moved that consideration be given to the assignment of applied behavior analysts to one of DHP's behavioral boards. The motion was seconded by Ms. Maddux and carried unanimously.

Updated Guidance on Travel

Mr. Owens briefly reviewed the updated official guidance on travel regulations. He explained that although no travel prohibition is in place, two considerations would be key in the approval/disapproval of requested travel. The first is whether all or a substantial portion will be reimbursed by an outside organization, and the second is whether the travel can be considered essential to the mission. Mr. Owens noted that requests should be submitted at least 10 days prior to the travel.

Survey Questions for Online Renewal Process

Dr. Harp reported that the Ad Hoc Committee on Competency did not finalize the questions at its October 14th meeting.

Licensing report

Ms. Powers mentioned the licensure of radiologist assistants beginning December 7, 2011. She also advised that interviews for the vacant allied administrative support position have been held, and a candidate should be selected soon.

She also spoke of DHP's initiative in paperless licensing. The Board will not provide a paper license or renewal card, however there will be the option for the licensee to print a renewal card if they choose to do so.

Ms. Powers informed the members that the total number of licensees was up 3.6% from last year with a total of 56,825 licensees under the Board of Medicine.

Discipline Report

Ms. Deschenes provided a summary of case management and covered the revised schedule for Thursday and Friday. She commented that Saturday's case has been settled by CO.

Credentials Committee Recommendation

The Board was provided with the Credentials Committee's recommendation in two matters heard on August 4, 2011.

On a motion made by Mr. Heretick and duly seconded, the Board voted unanimously to accept the recommendations on both applicants from the Credentials Committee.

Case presentation for possible summary suspension

The Board voted unanimously to summarily suspend the license of a respiratory care practitioner.

Announcements

Staff reminded the Board of their hearing assignments for the remainder of the day.

Adjournment: With no other business to conduct, the meeting adjourned at 11:50 a.m.

Next scheduled meeting: February 23, 2012

Claudette Dalton, M.D.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary